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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,895	07/24/2001	GERALD ANTON OFNER	046-7001.30	3043
466	7590	03/17/2004	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			FINEMAN, LEE A	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/889,895	OFNER, GERALD ANTON	
	Examiner	Art Unit	
	Lee Fineman	2872	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 6-62 is/are pending in the application.
- 4a) Of the above claim(s) 6-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 January 2004 has been entered in which claim 1 was amended, claim 62 was added and claims 2 and 4 were cancelled. Claims 1 and 6-62 are pending of which 6-61 are withdrawn.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Austria on 30 November 1999. It is noted, however, that applicant has not filed a certified copy of the A 2016/99 application as required by 35 U.S.C. 119(b).

Receipt is acknowledged of Austria application A1994/99, filed 24 November 1999, submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 states the limitations “at least one objective lens and one eyepiece” and “at least one optical element positioned and arranged to match parallaxes...movable along a curved path” which implies three distinct optical lenses. The specification (fig 1) describes only the situation when the objective lens (11) is the moving optical element. For examination purposes, examiner is taking the objective lens and moving optical element to be the same element as the applicant also stated in the remarks section of the amendment filed 8 January 2004 that “specifically, claim 1 recites that the objective lens is movable along a curved path.” The dependent claims inherit the deficiencies of the claims from which they depend.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanda in view of Austrian Patent Publication No. AT 000307 U1 (henceforth AT-307).

Kanda discloses a vision aid (fig. 5) in the form of telescopic spectacles with two lens systems which each comprise at least one objective lens (5) and one eyepiece (4), a focusing means (6) which changes the focal length to adjust the lens systems according to the distance of the telescopic spectacle from the object (fig. 6), and at least one optical element (5) positioned and arranged to match parallaxes between the lens systems of the vision aid to the focal length which has been set according to the distance of the telescopic spectacles from an object (fig. 6,

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column 3, line 55-column 4, line 2), such that in each said lens system, said at least one optical element is movable along a curved path (from connector 13) that crosses a beam path internal to the vision aid for changing an angle between external beam paths which run out of the respective lens systems toward the object; and wherein in each said lens system, the at least one optical element is rotatable along an axis perpendicular to said curved path so that said at least one optical element tilts when said at least one optical element is moved along said curved path (column 7, lines 23-31). Kanda discloses the claimed invention except for a means for changing the magnification factor of the lens systems and the focusing means being an autofocusing means. AT-307 teaches telescopic spectacles with two lens systems (fig. 1) with a means for changing the magnification factor of the lens systems (13, 14) and an autofocusing means (4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the means for changing the magnification factor of AT-307 to the system of Kanda to provide the viewer with more flexibility in viewing the image with a broader range of magnifications and to make the focusing mean of Kanda an autofocusing means as suggested by AT-307 to provide fast, accurate focusing of the object.

### ***Response to Arguments***

7. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Further, the applicant argues that claim 1 as amended is still generic. The examiner agrees that claim 1 is generic to the species represented by claims 6-61. Thus, should claim 1 be

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found allowable, any claim depending from or otherwise including the limitations of the allowed generic claim will be rejoined and considered by the examiner.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Fineman whose telephone number is (571) 272-2313. The examiner can normally be reached on Monday - Friday 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-23124. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LAF

February 24, 2004

  
**MARK A. ROBINSON**  
**PRIMARY EXAMINER**